

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEEPA KHANNA and U.S. POSTAL SERVICE,
AIRPORT MAIL FACILITY, JFK, Jamaica, N.Y.

*Docket No. 96-334; Submitted on the Record;
Issued January 20, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation.

The Board has duly reviewed the record on appeal and finds that the Office improperly terminated appellant's compensation.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

In its decision dated August 3, 1995, the Office terminated appellant's compensation on the strength of the February 21, 1995 report of Dr. Milton M. Smith, a Board-certified orthopedic surgeon selected to resolve a conflict concerning the extent of disability causally related to appellant's September 28, 1991 employment injury. The Board finds, however, that Dr. Smith's report is of diminished probative value and fails to justify the Office's action in terminating appellant's compensation benefits.

Dr. Smith's impression was status post contusion to the lumbar spine, objectively resolved, and he reported that there was no objective evidence from an orthopedic basis of a need to limit the nature of appellant's work activities or the time of her workday. Notwithstanding the Office's finding that his opinion was well rationalized, Dr. Smith offered no

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

more discussion of the issue than this. He gave no explanation for appellant's continuing complaints. Dr. Smith performed no diagnostic tests. He ignored the August 27, 1993 report of Dr. David P. Gerstman, a Board-certified radiologist, who found that a magnetic resonance imaging scan of appellant's lumbar spine showed disc degeneration with minimal central disc herniation at the L5-S1 level, consistent with the clinical diagnosis of vertebral subluxation complex. Dr. Smith made no attempt to address the findings and opinion given by appellant's attending physician, who maintained that appellant had a herniated disc syndrome with radiating pain as a result of disc compression in the neural canal. The only support that can be found for Dr. Smith's conclusion is the implicit support that comes from negative findings on physical examination alone, and even so, nothing in Dr. Smith's report indicates whether appellant, at the time of her examination, was under the influence of the pain killers and muscle relaxants being prescribed by her attending physician, which may have suppressed objective signs of an existing lumbar pathology.

When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.³

Dr. Smith's report lacks the full medical discussion typically needed to justify the termination of an employee's continuing compensation benefits. His opinion is a cursory one, leaving the Board to wonder what to make of the positive findings and diagnoses and prescriptions and restrictions reported throughout the record.⁴ With Dr. Smith's report, no adequate explanation exists to account for this evidence. Thus, it may be said that Dr. Smith cast his vote but left important questions unanswered. For all of the reasons above, the Board finds that Dr. Smith's report is not sufficiently rationalized to justify the termination of appellant's compensation.

³ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

⁴ A subsequent report from another Board-certified orthopedic surgeon noted the positive diagnostic tests, radiating pain, intermittent numbness, tenderness to palpation, mildly positive straight leg raising on the right, and diagnosed lumbar radiculopathy on the right causally related to the injury that occurred on September 28, 1991.

The August 3, 1995 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, D.C.
January 20, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member